

# UNIT 13 CONTRACT FINANCING

*September 2002*

*(FAC 2001-09)*

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<b>Duty</b>	Determine whether to provide for Government financing and, where necessary, the method of financing.
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<b>Conditions</b>	Given forecast requirements, written or unwritten acquisition plan, market research, Procurement Request, and other related documents.
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<b>Overall Standard</b>	Decisions on financing best meet the legitimate needs of contractors while minimizing the Government's monetary risk and ensuring satisfactory contract completion.
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## **Part A: Commercial Item Financing**

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<b>Sub-Duty</b>	Determine whether to provide for Government financing in the solicitation and, where necessary, the method of financing.
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<b>Additional Conditions</b>	Given a commercial item requirement.
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<b>Sub-Duty Standard</b>	Decisions on financing best meet the legitimate needs of contractors while minimizing the Government's monetary risk and ensuring satisfactory contract completion.
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# UNIT 13 CONTRACT FINANCING

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## **Part B: Providing for Non-Commercial Item Financing in the Solicitation**

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<b>Sub-Duty</b>	Determine whether to provide for Government financing in the solicitation and, where necessary, the method of financing.
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<b>Additional Conditions</b>	Given a non-commercial item requirement.
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<b>Sub-Duty Standard</b>	Decisions on financing best meet the legitimate needs of contractors while minimizing the Government's monetary risk and facilitating satisfactory contract completion.
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## **Part C: Evaluating Non-Commercial Item Offers Contingent Upon Financing**

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<b>Sub-Duty</b>	Determine the need for contractor Government financing and, where necessary, the method of financing.
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<b>Additional Conditions</b>	Given a non-commercial item requirement and a contractor's request for financial assistance submitted with the offer or during contract performance.
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<b>Sub-Duty Standard</b>	Decisions on financing best meet the legitimate needs of contractors while minimizing the Government's monetary risk and facilitating satisfactory contract completion.
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# UNIT 13 CONTRACT FINANCING

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## Policies

<i><b>FAR</b></i>	<i><b>Agency Suppl.</b></i>	<i><b>Subject</b></i>
12.210		Contract financing for commercial items.
32.001		Definitions.
32.005		Consideration for contract financing.
32.102		Description of contract financing methods.
32.104		Providing contract financing.
32.105		Uses of contract financing.
32.106		Order of preference.
32.107		Need for contract financing not a deterrent.
32.108		Financial consultation.
32.111		Contract clauses for non-commercial purchases.
32.113		Customary contract financing.
32.114		Unusual contract financing.
32.2		Commercial item purchase financing.
32.3		Loan guarantees for defense production.
32.4		Advance payments for non-commercial items.
32.500 through 502		Progress payments based on costs.
32.504		Subcontracts under prime contracts providing progress payments.
32.10		Performance-based payments.
52.232-12		Advance payments.
52.232-13		Notice of progress payments.
52.232-14		Notice of availability of progress payments exclusively for small business.
52.232-15		Progress payments not included.
52.232-16		Progress payments.
52.232-29		Terms for financing of purchases of commercial items.
52.232-30		Installment payments for commercial items.
52.232-31		Invitation to propose financing terms.
52.232-32		Performance-based payments.

## Other KSA's

1. Knowledge of corporate financial management.
2. Knowledge of criteria for determining whether a contractor has a valid need for financial assistance.

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3. Skill in identifying independent sources of information and advice on the financial situation of contractors.
4. Ability to obtain information and advice to validate the contractor's alleged cash flow difficulties.
5. Ability to apply sound business judgment and reasoning in identifying the need for and appropriate type of contract financing.
6. Ability to use imagination to develop creative financing solutions tailored to the acquisition situation.
7. Ability to examine the numerous and complex details associated with contract financing decisions.
8. Ability to make decisions in the Government's best interest based on available information.
9. Ability to maintain the honesty and integrity of the acquisition process.

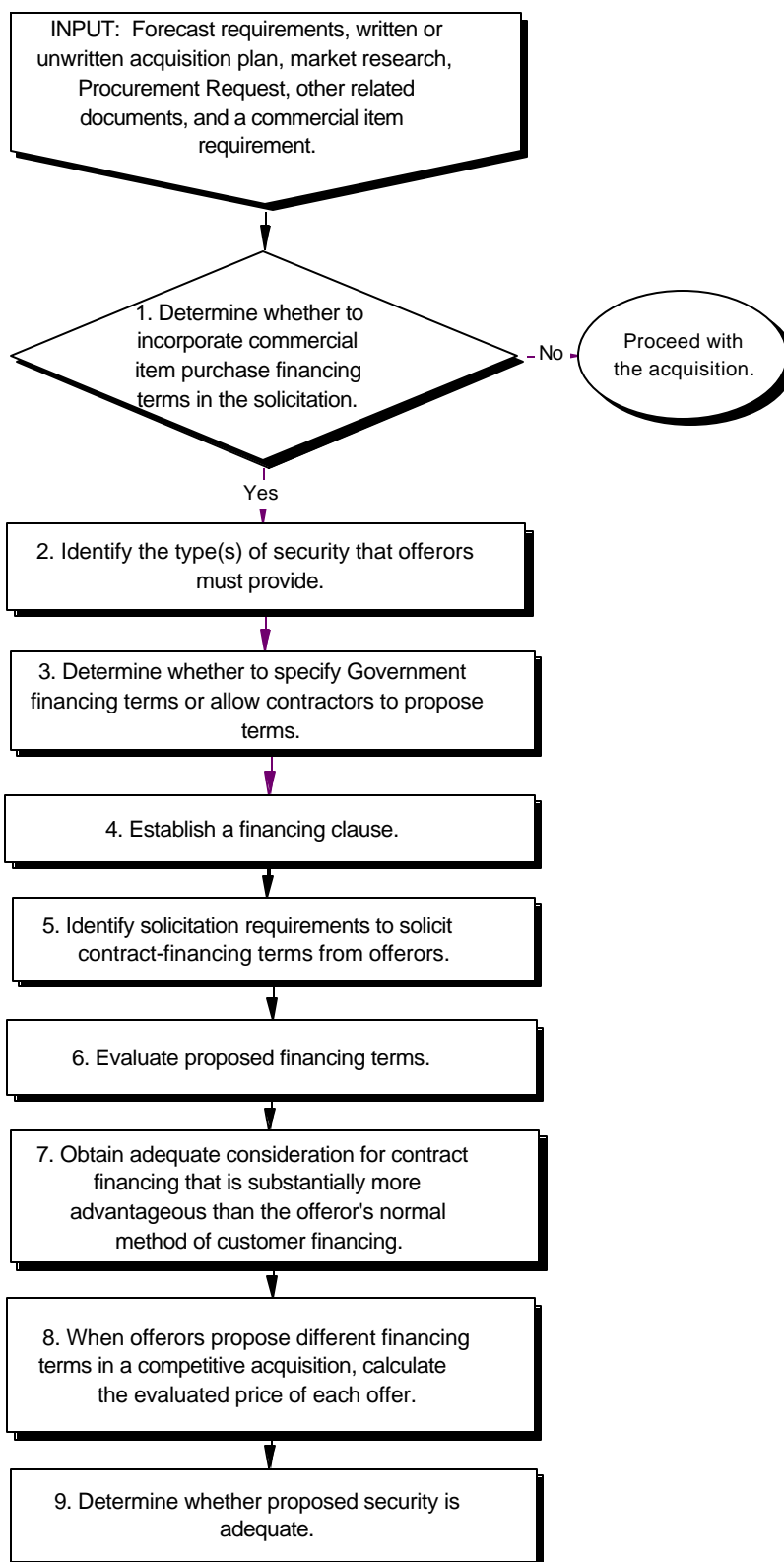
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**Other Policies and References (Annotate As Necessary):**

# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

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# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

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Tasks	Related Standards
1. Determine whether to incorporate commercial item purchase financing terms in the solicitation.	<p>Commercial item financing may be made available when the following conditions exist:</p> <ul style="list-style-type: none"><li>• The contract item financed is a commercial supply or service;</li><li>• The contract price exceeds the simplified acquisition threshold (SAT);</li><li>• The Contracting Officer determines that it is appropriate or customary in the commercial marketplace for buyers to finance sellers of the item;</li><li>• Adequate security is obtained;</li><li>• Prior to performance of work, the aggregate of commercial advance payments must not exceed 15 percent of the contract price;</li><li>• The contract is awarded using competitive procedures or, if only one source is solicited, adequate consideration is obtained if the financing is substantially more advantageous to the offeror than the offeror's normal method of customer financing; and</li><li>• The Contracting Officer obtains any required concurrence from the payment office concerning liquidation provisions.</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

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Tasks	Related Standards
2. Identify the type(s) of security that offerors must provide.	<p>Identify the type(s) of security that that the Government is willing to accept from the following alternatives:</p> <ul style="list-style-type: none"><li>• Subject to agency regulations, the offeror's financial condition, if:<ul style="list-style-type: none"><li>- The Contracting Officer determines it provides adequate security, and</li><li>- The offeror agrees to provide additional security if that financial condition becomes inadequate as security.</li></ul></li><li>• Paramount lien on specified assets (e.g., work in process, the contractor's plant, or the contractor's inventory), if the contractor:<ul style="list-style-type: none"><li>- Certifies that the assets subject to the lien are free from any prior encumbrances; and</li><li>- The contract authorizes the Government to verify the existence and value of the assets.</li></ul></li><li>• Irrevocable letters of credit from a federally insured financial institution.</li><li>• A bond from a surety acceptable in accordance with FAR Part 28 (note that the bond must guarantee repayment of the unliquidated contract financing).</li><li>• A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor.</li><li>• Title to identified contractor assets of adequate worth.</li><li>• Other assets described in FAR 28.203-2, 28.203-3, and 28.204</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

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Tasks	Related Standards
3. Determine whether to specify Government financing terms or allow contractors to propose terms.	<p>In making the determination, consider the following:</p> <ul style="list-style-type: none"><li>• Terms may be specified when there is sufficient information available to establish the customary terms in the commercial marketplace for the item.</li><li>• If you select offeror proposed financing terms: (FAR 32.205)<ul style="list-style-type: none"><li>- The solicitation must include the Invitation to Propose Financing Terms (FAR 52.232-31);</li><li>- Each offeror may propose financing terms that differ from those proposed by other offerors;</li><li>- Proposed financing terms must be considered as a factor in evaluating total cost of an offer to the Government; and</li><li>- The awardee's financing terms must become part of the contract.</li></ul></li><li>• If the Contracting Officer specifies terms: (FAR 32.204)<ul style="list-style-type: none"><li>- The solicitation must include the financing terms in the solicitation – either by drafting a clause as prescribed at FAR 32.206(b) or by incorporating the clause at FAR 52.232-30, Installment Payments for Commercial Items.</li><li>- Proposed financing terms must not be considered as a factor in evaluating total cost of an offer to the Government – even if one of the offerors proposes to do the work without Government financing. On the other hand, a proposal must not be considered nonresponsive because it rejects financing.</li><li>- Specified financing terms become part of the contract, unless the offeror declines financing.</li></ul></li></ul>



# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

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Tasks	Related Standards
4. Establish a financing clause.	<p>If the Contracting Officer specifies the financing terms, the financing clause must be in the solicitation. If offerors can propose financing alternatives, the clause must be included in the contract.</p> <p>The Installment Payments for Commercial Items clause at FAR 52.232-30 may be used if installment payments are either customary or authorized under agency procedures.</p> <p>For other contracts, the contract financing clause must:</p> <ul style="list-style-type: none"><li>• Describe the computation of the financing payment amounts.</li><li>• Describe specific conditions of contractor entitlement to those financing payments.</li><li>• Describe how financing payments will be liquidated by delivery payments.</li><li>• Describe the security provided by the contractor for the financing payments.</li><li>• Describe the frequency, form, and any additional content of the contractor's request for financing payments (in addition to the requirements of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items).</li><li>• Include FAR 52.232-29, Terms for Financing of Purchases of Commercial Items. Agency regulations may authorize alterations to the clause.</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

*September 2002*

Tasks	Related Standards
5. Identify solicitation requirements to solicit contract-financing terms from offerors.	<p>The solicitation must include:</p> <ul style="list-style-type: none"><li>• The Invitation to Propose Financing Terms (52.232-31) provision.</li><li>• The delivery payment (invoice) dates that will be used to evaluate financing proposals. (FAR 32.205).</li><li>• The interest rate to be used for evaluating the proposed financing terms. Use the Nominal Discount Rate specified in OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, Appendix C, appropriate for the period of contract financing. (FAR 32.205)</li></ul>
6. Evaluate proposed financing terms.	<p>Evaluate offeror-proposed financing terms to correctly:</p> <ul style="list-style-type: none"><li>• Determine whether the proposed financing complies with FAR Part 32 and agency FAR Supplements (e.g., the limit of 15% on commercial advance payments). Any contract financing arrangement not in accord with the requirements of agency regulations or FAR Part 32 is unusual contract financing and requires advance approval in accordance with agency procedures.</li><li>• Identify front-loaded financing terms. Exceptionally high amounts of financing early in the contract may unduly increase the risk to the Government.</li><li>• Analyze the security and the amounts and timing of financing payments as a whole to determine whether the arrangement will be in the best interest of the Government.</li><li>• Determine the acceptability of the proposed liquidation method (including any required payment office concurrence).</li><li>• Ensure the proposed terms are complete and in compliance with FAR 32.206 requirements.</li><li>• Identify any other reason for questioning whether proposed financing terms are in the Government's best interests.</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part A: Commercial Item Financing

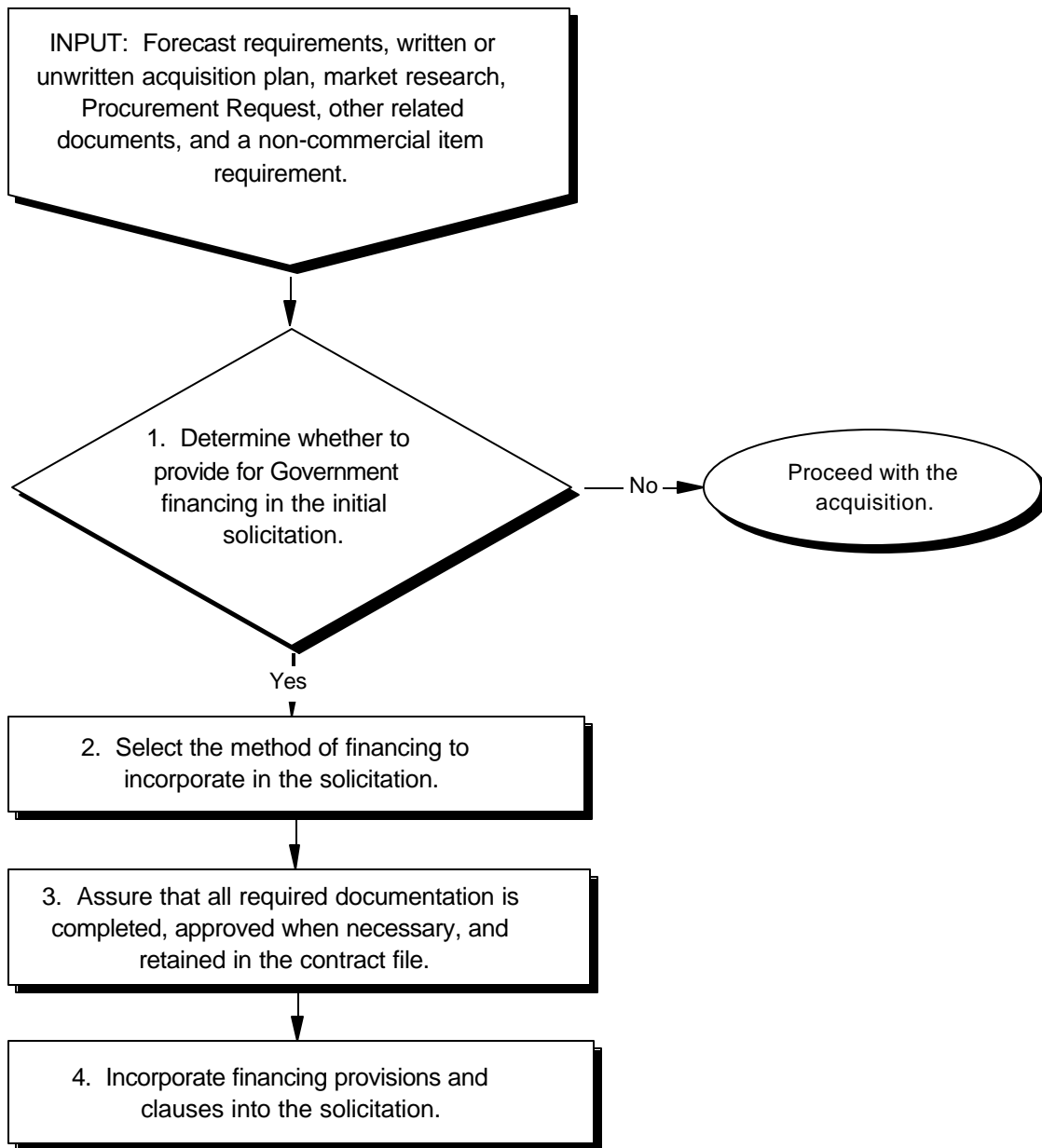
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Tasks	Related Standards
7. Obtain adequate consideration for contract financing that is substantially more advantageous than the offeror's normal method of customer financing.	<p>Consider the following:</p> <ul style="list-style-type: none"><li>• If the proposed contract financing varies from the offeror's normal method of financing calculate the net present value of each method of funding.</li><li>• Compare the present values.</li><li>• If the present value of the proposed method is substantially more advantageous financially, assure that the contract price provides adequate consideration (i.e., something of value). When conducting negotiations, address the need for additional consideration when preparing negotiation objectives.</li></ul>
8. When offerors propose different financing terms in a competitive acquisition, calculate the evaluated price of each offer.	<p>Calculate the evaluated price for each offer by correctly:</p> <ul style="list-style-type: none"><li>• Computing the imputed cost of the financing payments using the Nominal Discount Rate specified in Appendix C of OMB Circular A-94, "Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts", appropriate to the period of contract financing; and</li><li>• Adding the imputed cost to the proposed price.</li></ul>
9. Determine whether proposed security is adequate.	<p>Correctly determine whether the proposed type and amount of security is adequate. The value of the security must at least equal the maximum unliquidated amount of the contract financing payments.</p> <p>Assure that the resulting contract specifies a type of security and an amount acceptable to the Contracting Officer.</p>

# UNIT 13 CONTRACT FINANCING

## Part B: Providing for Non-Commercial Item Financing in the Solicitation

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# UNIT 13 CONTRACT FINANCING

## Part B: Providing for Non-Commercial Item Financing in the Solicitation

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Tasks	Related Standards
1. Determine whether to provide for Government financing in the initial solicitation.	Provide Government financing only to the extent actually needed for prompt and efficient performance, considering the: <ul style="list-style-type: none"><li>• Availability of private financing; and</li><li>• Probable impact on working capital of the pre-delivery expenditures and production lead-times associated with the contract, or groups of contracts or orders.</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part B: Providing for Non-Commercial Item Financing in the Solicitation

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Tasks	Related Standards
2. Select the method of financing to incorporate in the solicitation.	<p>Subject to specific agency regulations, the Contracting Officer may provide:</p> <ul style="list-style-type: none"><li>• Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion.</li><li>• Financing of contracts for supplies or services:<ul style="list-style-type: none"><li>- Awarded using sealed bidding through progress payments based on costs in accordance with FAR 32.104(d) and 32.5.</li><li>- Awarded using negotiation procedures through either (but not both) progress payments based on costs in accordance with FAR 32.104(d) and 32.5, or performance-based payments in accordance with FAR 32.104(d) and 32.10.</li><li>- Through advance payments in accordance with Subpart 32.4.</li><li>- Through guaranteed loans in accordance with Subpart 32.3.</li><li>- Through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.</li></ul></li></ul> <p>The Contracting Officer must not provide unusual progress payments except as: (FAR 32.114)</p> <ul style="list-style-type: none"><li>• Approved by the head of the agency; or</li><li>• Provided for in agency regulations.</li></ul>

# UNIT 13 CONTRACT FINANCING

## Part B: Providing for Non-Commercial Item Financing in the Solicitation

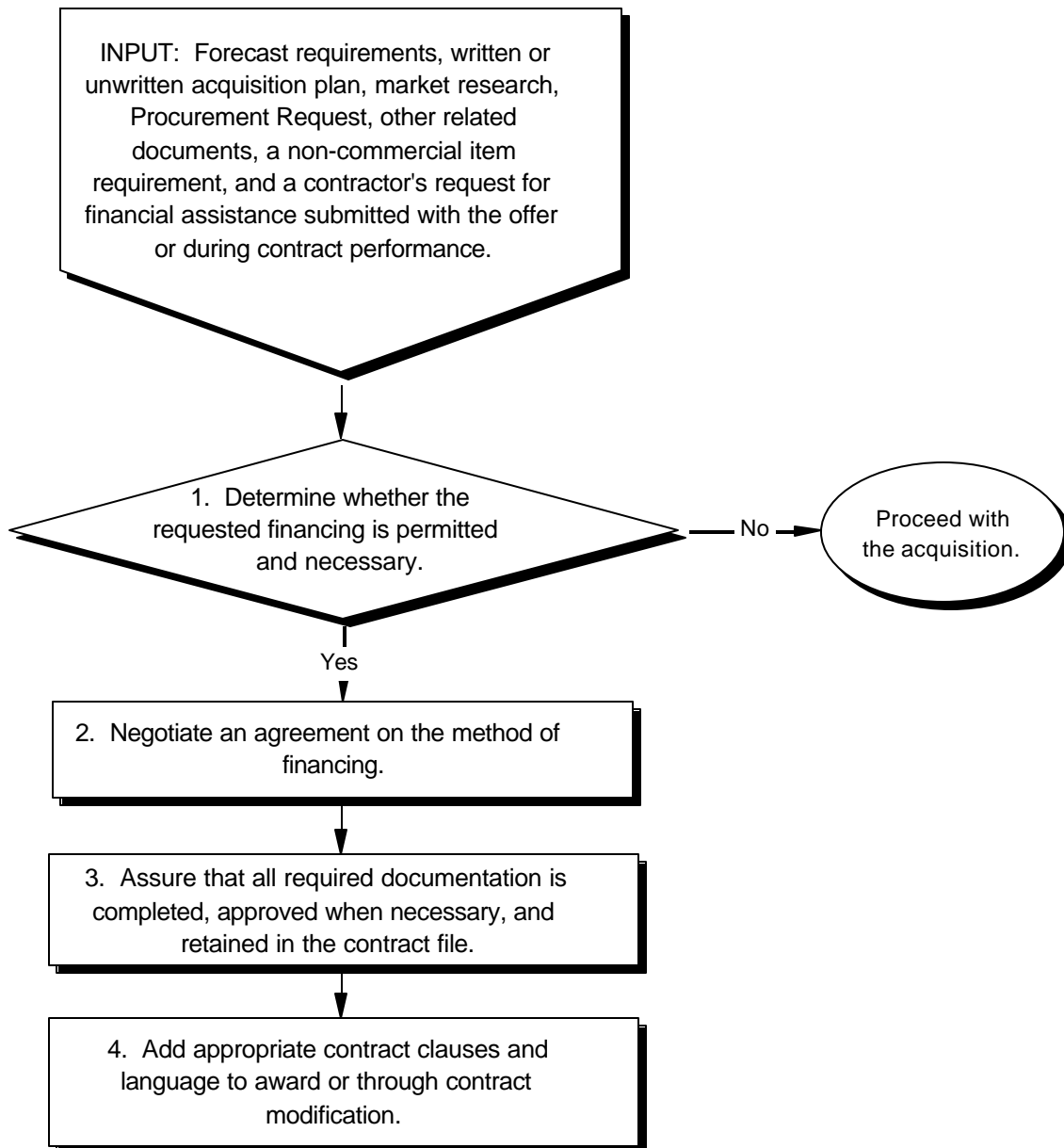
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Tasks	Related Standards
3. Assure that all required documentation is completed, approved when necessary, and retained in the contract file.	Correctly: <ul style="list-style-type: none"><li>• Prepare or obtain the documentation required by FAR Part 32.</li><li>• Obtain any required approvals (e.g., the findings and determination for approval of advance payment terms);</li><li>• Retain all relevant documentation in the contract file.</li></ul>
4. Incorporate financing provisions and clauses into the solicitation.	Incorporate the appropriate provisions and clauses required by FAR Part 32 for the method of financing selected.

# UNIT 13 CONTRACT FINANCING

## Part C: Evaluating Non-Commercial Item Offers Contingent Upon Financing

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# UNIT 13 CONTRACT FINANCING

## Part C: Evaluating Non-Commercial Item Offers Contingent Upon Financing

September 2002

Tasks	Related Standards
1. Determine whether the requested financing is permitted and necessary.	<p>Points that the Contracting Officer should consider in making the determination include the following:</p> <ul style="list-style-type: none"><li>• Reject any bid conditioned on progress payments as nonresponsive when the solicitation did not provide for progress payments. (FAR 32.502-1)</li><li>• If an offeror is otherwise responsible, never treat the need for financing as a handicap for contract award (i.e., as a factor in determining responsibility or an evaluation criterion). (FAR 32.107(a))</li><li>• A contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for it before the contract was awarded. (FAR 32.107(b))</li><li>• Customary contract financing may be provided in accordance with FAR 32.113.</li><li>• Unusual contract financing must not be provided except as: (FAR 32.114)<ul style="list-style-type: none"><li>- Approved by the head of the agency; or</li><li>- Provided for in agency regulations.</li></ul></li><li>• The need for financing, including:<ul style="list-style-type: none"><li>- The requirements of FAR 31.104(d).</li><li>- Information included with the request;</li><li>- Independent information on the requester's financial status (i.e., auditors, SBA, and others).</li><li>- Any additional information obtained from the requester to support or verify the need.</li></ul></li></ul>

# UNIT 13 CONTRACT FINANCING

## Part C: Evaluating Non-Commercial Item Offers Contingent Upon Financing

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Tasks	Related Standards
2. Negotiate an agreement on the method of financing.	<p>In establishing negotiation objectives, consider the following order of preference unless an exception to this order would be in the Government's best interest:</p> <ul style="list-style-type: none"><li>• Private financing without Government guarantee. However, do not require the contractor to obtain private financing:<ul style="list-style-type: none"><li>- At unreasonable terms; or</li><li>- From other agencies.</li></ul></li><li>• Customary contract financing other than loan guarantees and certain advance payments (FAR 32.113).</li><li>• Loan guarantees.</li><li>• Unusual contract financing (FAR 32.114).</li><li>• Advance payments (FAR 32.402(b)).</li></ul> <p>Assure that the agreement covers all elements required for the method of financing. For example, an agreement on performance-based payments should include the:</p> <ul style="list-style-type: none"><li>• Performance milestones.</li><li>• Performance-based finance payment amounts.</li><li>• Liquidation rates or dollar amounts.</li><li>• Instructions for multiple appropriations (when appropriate).</li></ul>
3. Assure that all required documentation is completed, approved when necessary, and retained in the contract file.	<p>Correctly:</p> <ul style="list-style-type: none"><li>• Prepare or obtain the documentation required by FAR Part 32.</li><li>• Obtain any required approvals (e.g., the findings and determination for approval of advance payment terms);</li><li>• Retain all relevant documentation in the contract file.</li></ul>
4. Add appropriate contract clauses and language to award or through contract modification.	<p>Incorporate the appropriate provisions and clauses required by FAR Part 32 for the method of financing selected.</p>